



## ORDINANCE REVIEW COMMITTEE

### Members

*Councilor John Thorpe, Chair*  
*Megan Paik, Citizen, Vice-Chair*  
*Councilor Marianne LaBarge*  
*Councilor Jim Nash*  
*Jeff Napolitano, Citizen*

### MEETING MINUTES

**Date: December 15, 2020, Time: 5:30 p.m.**

### **Virtual Meeting**

1. **MEETING CALLED TO ORDER/ROLL CALL:** At 5:32 p.m., Councilor Thorpe called the meeting to order. On a roll call, the following members were present: Councilor John Thorpe, Councilor James Nash and Member Megan Paik. Councilor Marianne LaBarge and Member Jeff Napolitano were not present on roll call but joined shortly thereafter. Also present were City Solicitor Alan Seewald and Administrative Assistant Laura Krutzler.
2. **ANNOUNCEMENT OF AUDIO/VIDEO RECORDING**  
Councilor Thorpe announced that the meeting was being audio/video recorded.
3. **PUBLIC COMMENT**  
Councilor Thorpe opened the floor to public comment and explained the procedure he would use in conducting public comment. There being no members of the public present, Councilor Thorpe moved to the next item on the agenda.
4. **APPROVAL OF MINUTES OF NOVEMBER 30, 2020**  
Councilor Nash moved to approve the minutes of November 30, 2020. Member Paik seconded.  
  
Member Paik said she noticed that one of the commenters on November 30th mentioned repealing the Chapter 245 ordinances related to panhandling and soliciting. She wondered if the committee was interested in discussing that section.  
  
Councilor Nash suggested talking about this under New Business at the end of the meeting. He said he thinks it's a great idea.  
  
The motion passed 3:0 by roll call vote with Councilor LaBarge and Member Napolitano absent.
5. **COMMERCIAL BUFFER ZONE PROPOSAL**

Councilor Thorpe read the text of §312-25 Prohibited Activities during Certain Hours of the Day, an ordinance prohibiting certain activities (i.e. – trash collection, demolition, construction, etc.) in residential districts between the hours of 10 p.m. and 7 a.m. Councilor Jarrett proposed creating a buffer zone for commercial areas in close proximity to residential districts so residents directly adjacent to commercial properties would be free of disturbance by these activities.

Councilor Thorpe recognized Councilor Jarrett.

Related regulations include this section and another section in zoning which prohibits persistently loud or disruptive noises between 10 p.m. and 7 a.m., Councilor Jarrett advised. The ordinance prescribes maximum decibel levels for residential, commercial and industrial zoning districts depending on the time of day, he noted.

Councilor Jarrett said he assumes ‘residential’ zones are the five residential districts with residential titles [Rural Residential, Suburban Residential, Urban Residential A, Urban Residential B and Urban Residential C]. As far as he can tell, residential use is also allowed in every other district except General Industrial and Medical zones, he pointed out.

One idea is to modify the language to say that these activities would be prohibited in any zone where residential use is allowed, but that could potentially be too broad if there is a legitimate need for noise in an office industrial or commercial district between 10 p.m. and 7 p.m., he acknowledged.

In Ward 5 conflicts reported to him are primarily around residential properties that border Florence Center and the Silk Mill, which is zoned office industrial, he related. He read in last week’s minutes that Attorney Seewald said a buffer zone would be a nightmare to enforce and that there were potential logistical problems. He wondered if anyone was aware of a buffer zone idea in any other city.

Councilor Nash said he and Councilor Jarrett discussed this the other day, and he shares this concern from constituents. It tends to happen around apartment buildings and people living close to downtown and the village center. The biggest complaint has to do with hauler’s showing up to pick up dumpsters at 3, 4 and 5 in the morning and startling people awake.

Councilor Nash said he has been trying to do a little research into how violations are enforced. He learned that the building department does expect enforcement to occur in the downtown area since it allows residential use but is not quite sure who is responsible for enforcement. He is in the process of drafting an email to Building Commissioner Jonathan Flagg to ask who is supposed to enforce it.

The way he’s resolved things mostly is getting ahold of the property owner and having them reach out to the hauler. Generally, once the hauler understands what’s going on, they stop it. He thinks haulers are confused because they don’t know where residential/commercial zones begin and end. His understanding is they are allowed to pick up dumpsters in commercial zones like the industrial park. His guess is haulers are starting as early as they can and guessing as to where the commercial zone is.

He wonders if there is a way to let haulers know not to pick up trash before 7 in the morning and to clarify that earlier trash collection is only allowed in the industrial park or Highway Business zone. He thinks they are asking haulers to do too much interpreting at way too early in the morning.

Councilor Jarrett said he is interested to hear that the building department considers the downtown area to be a residential zone. If that's the case, maybe no modification needs to happen. It may be just a matter of talking to the property owner and making sure they understand the rules.

He's working on investigating it a little more and is happy to work with Councilor Jarrett to clarify how the ordinance is expected to be enforced, Councilor Nash said.

In response to a question from Councilor LaBarge, Councilor Jarrett said the residential areas he's heard complaints from are those bordering Florence Center; i.e. - Middle Street and as far as Pine Street - and the Silk Mill area.

She lives close to subsidized housing and there are a lot of neighborhood complaints about DPW vehicles, including snow blowers and leaf blowers that go to work fairly early. Even 7 a.m. might be a little early for some people, Member Paik suggested. She said she didn't know if the ordinance might be worth visiting. Maybe moving the start time back to standard working hours [is worth considering].

Councilor Nash said he recommends having this on a future agenda so they can bring in a little more information. They need to figure out who enforces it and where else it may be in the zoning. He and Councilor Jarrett can come back and report on that, he volunteered.

If any of the contractors are associated with the housing authority, the housing authority will actively respond to reports of problems, Councilor Nash said. Member Paik said that is helpful to know.

Councilor Jarrett said he is curious about the definition of a 'residential zone.' He asked the solicitor if that is a zone where residential use is allowed or a zone with residential in the title?

Attorney Seewald said it's a good question. He would have said it's one of the residential zones but it sounds like the city is taking a different tack. Maybe that's all that's needed, to clarify that places where residential uses are allowed are considered residential zones [for the purpose of enforcement of the nuisance ordinance].

The places where this is most problematic are places where they really need to be loading and unloading in the middle of the night such as Walmart, Stop and Shop and Big Y, Attorney Seewald pointed out. It's going to be a real problem for the supermarkets if they can't do that. If the city does make a change to prohibit the activities listed in any zone in which residences are allowed, they are going to pick up a lot of businesses that are used to loading and unloading in the middle of the night. Big Y is adjacent to an urban residential zone, he noted. As an alternative, they could select out collection of trash for a complete prohibition anywhere in the city during those hours and be a little more liberal with the loading and unloading of trucks, he suggested.

If you create a 100-foot buffer, to him it always seems like the resident who is 101 feet away is going to hear the dumpster just as well and isn't going to like that he is over the line. It would make more sense to him to really focus on the issue that seems to be the problem which is dumpsters and completely prohibit that early in the morning, before 7 o'clock. He doesn't know what that would mean for the trash collection business.

Councilor Jarrett commented that a lot of it is related to people's expectations. He imagines people who bought property on Pine Brook Curve expect there to be a lot of noise at all hours. He agreed he and Councilor Nash will think about this more and see how the city is enforcing it and determine if it is just about dumpsters or also about other aspects such as construction and demolition.

Discussion turned briefly to a broader discussion of nuisances in general. Attorney Seewald cited the legal definition of nuisance as being "unreasonable interference with the use or enjoyment of another person's property." There's always the question of whether a person moved to the nuisance or the nuisance moved to them, Attorney Seewald observed. Councilor LaBarge said she spent the entire summer dealing with nuisance issues reported by residents of Brookwood Drive. "There's ways of handling it. It took us months, but we did it."

Nuisance ordinances have been disproportionately enforced against people who are BIPOC or different so she is always really cautious about that, Member Paik volunteered. She wondered aloud if it is better to have something on the books or to have a councilor resolve conflicts in an interpersonal way rather than imposing fines or fees and using enforcement tactics.

Councilor Thorpe expressed his understanding that Councilor Nash wanted to table this subject for further discussion after he and Councilor Jarrett do more research. He thanked Councilor Jarrett for being present.

#### **6. DISCUSS MEETING SCHEDULE**

Members agreed to meet at 5:30 p.m. on the following dates: January 4, 2021, January 11, 2021 and February 1, 2020.

#### **7. FORMAT/STRUCTURE OF FINAL REPORT**

Members discussed ideas for structuring the final report. They will have to make decisions on whether to recommend the specific ordinance changes that have been reviewed by Attorney Seewald, Member Paik reminded. They have nebulous ideas that could turn into ordinances that she also thinks are important to include in the report. She offered to draft something and share it with them at the next meeting.

Members accepted her offer with thanks.

Councilor Nash suggested organizing the report following the 'bucket' concept they have developed. It would be helpful to have a google doc or spreadsheet tracking the status of these buckets; i.e. – identifying the items in buckets A, B and C and noting where they are in the review process. Some of the ideas have been referred out to other agencies such as the housing partnership and may not come back before the end of the reporting period. In that case, the report would note that the proposal is being looked at further by another agency. It would be helpful to have some sort of grid to figure out where everything is.

He voiced his expectation that all housekeeping changes are going to be part of the report. It is 'bucket' b and c that he is less clear about.

She is not talking about it being a 90- or 100-page report but does think there should be a section talking about their purpose, their specialized charge to cover ordinances that disproportionately affect vulnerable communities, their review process and how they went about their work. She is happy to start drafting that unless members feel it should be written by Attorney Seewald.

Attorney Seewald said he would be happy to prepare a draft but would defer to however the committee would like it done. He has done a couple of reports for review committees in the past and so does have some experience doing that but if one of the committee members would like to do it, he has no pride of authorship.

Member Paik asked if a past report is publicly available.

The Charter Review Committee just submitted one last year, Attorney Seewald said. The earlier Charter Review Committee just said, 'We have no comments other than we need a new charter.'

Councilor Nash asked if there is a general outline recommended. He likes Member Paik's suggestion that the committee's methodology/approach be embedded in the document, he said.

Attorney Seewald said no. For the last report, the committee provided a narrative explaining its methodology and attached a spreadsheet with recommended changes.

Councilor Nash suggested keeping this item on the agenda and continuing to touch upon it until it's done.

**8. REMAINING ORDINANCES TO REVIEW/FURTHER RESEARCH NEEDED - WORK PLAN FOR SECOND PHASE**

Member Paik repeated her observation that a member of the public referred to Chapter 245 - the section of ordinances pertaining to soliciting and panhandling - and recommended they be repealed. She said she would like Attorney Seewald to weigh in.

The city never enforces anti-panhandling laws, but he didn't see anything in Chapter 245 that specifically applies to panhandling Attorney Seewald advised. Ironically, the Supreme Judicial Court today struck down the state anti-pan-handling statute as unconstitutional and in violation of the 1<sup>st</sup> amendment. There is no, has been no and will be no enforcement of anti-panhandling, he stressed. It is 1<sup>st</sup> amendment-protected and perfectly permissible and there's nothing they are going to do about it. There are a couple of areas they don't enforce – signs and panhandling.

Another suggestion heard is that the city repeal camping and related ordinances, Member Paik noted.

Councilor Thorpe said Councilor Nash touched on this at the last meeting.

His review of ordinances did not find any ordinance prohibiting camping on city property, Councilor Nash confirmed. He does know there are prohibitions against camping on city conservation property. As far as he knows, there is nothing on the books prohibiting camping in public space.

The real problem with so-called camping is there are no sanitary facilities, Attorney Seewald observed. It is more about sanitation than anything else. The state sanitary code would apply but he doesn't know of any ordinance that specifically prohibits camping in the City of Northampton. Obviously, there are people camping on the steps of City Hall, so they can't be doing much enforcement.

Member Paik suggested the possibility that the concern may be more generalized and not specific to Northampton since those advocating for the homeless population are active on a regional level. She mentioned her awareness that Westhampton has a prohibition against temporary structures.

Councilor Nash said he has been going through Taylor Porco's letter and working with Alan Wolf in the mayor's office to clarify what's fact and what's fiction. He agreed part of what's going on is there are regional issues around the houseless population and Northampton is actually ahead of the curve in many ways. If you do a google search on services for the homeless, it directs you to Northampton.

He would like to have this on a future agenda to review it and get down to what they could actually be working on. Tay said she was going to email the committee a list of towns that had enacted protective policies. Member Paik asked if that had ever happened.

Councilor Thorpe said he had not received it.

Tay wanted the committee to look at an ordinance prohibiting the sale of public buildings, Attorney Seewald reminded. He just wanted to caution them about that. The same five councilors who vote to approve the ordinance could subsequently vote to suspend the ordinance and vote to sell property. "It's a meaningless ordinance," he suggested. Only five councilors are needed to pass it but only five councilors are needed to sell property.

Councilor Nash said he wanted to research how often the city has actually done what's been suggested; i.e. - how many times the city has sold or given property to developers for profit that is taking opportunities for affordable housing off the books. "I just don't think that's an accurate statement." In selling land, the city is always meeting some kind of open space requirement, affordable housing goal, etc. In his experience, the city and planning department is always working to meet one of those goals.

In almost every sale he's been involved with in the eight years he's served as city solicitor, there has been some public benefit or community need the city is trying to fill, Attorney Seewald confirmed. Thirty years ago, he sat on the committee that decided to sell the former South Street School to the Northampton Community Music Center. Although not housing, it filled a community need. A lot of these buildings are not really set up for people to live in. They weren't residences when the city was using them and are not residences now. If city officials are going to be expected to provide sanitary facilities to turn these into houses they are going to have to approach this financially in a whole different way.

The ultimate sale for private development was the Old School Commons but the city got the top floor for the Center for the Arts for 25 years in return. There's always some public benefit that's included in the sale of public buildings.

Member Paik said she feels a sense of responsibility to include clarifications and corrections of misconceptions in the report and also to recognize the very real concern a lot of people have about the houseless, especially now. However, any congregate setting is really risky at this time and there are very few options for indoor accommodations for the surge in numbers of homeless. She feels like they do need to provide a little bit about that in their report in the section about housing. They hear a lot of these comments over and over again. They deserve to be addressed and recognized and it's also part of their responsibility to educate the public, she explained.

Member Paik reported back on her communication with Wayne Feiden about the status of materials (financial and legal resources) to be distributed along with notices to quit to people facing eviction. He said it didn't appear to be completed and Community Action Pioneer Valley is handling outreach and dissemina-

tion of this information. There doesn't seem to be something drafted and ready to be posted to a website at this point.

He is having a similar discussion about getting out information via meetings of the Community Resources Committee, Councilor Nash shared. He and Councilor Jarrett have had a discussion around bringing in leadership in the community around homelessness and around how to get information to people facing eviction. She's answered his question of who could be a resource to invite to the meeting. He is scheduled to have a conversation with Pamela Schwartz tomorrow around her work on advocacy for the houseless.

This is also a focus for the Human Rights Commission, Member Paik said.

Councilor LaBarge noted that Jennifer Derringer is an excellent legal resource for people facing eviction. Councilor Nash thanked her.

With so many facing eviction in a few weeks, they don't have time to wait for the drafting of an ordinance before educating as many people as possible, Member Paik commented. Nobody is able to affect the eviction, but it helps to prepare people with some resources while they are still housed.

They will be having this discussion again, Councilor Thorpe assured.

#### **9. ADJOURN**

Member Paik moved to adjourn. Councilor LaBarge seconded. The motion passed unanimously 4:0 with Member Napolitano absent. The meeting was adjourned at 6:49 p.m.